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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-909

Certain Steel Nails from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Results of the First Antidumping Duty Administrative Review and Notice of Amended Final Results of the First Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On October 5, 2018, the United States Court of International Trade (CIT or Court) entered final judgment in *The Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, sustaining the final results of remand redetermination pertaining to the first administrative review of the antidumping duty order on certain steel nails from the People's Republic of China (China), covering the period of review (POR) of January 23, 2008 through July 31, 2009. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with Commerce's final results of the first administrative review or the amended final results of the first administrative review, and that, therefore, Commerce is amending the final results with respect to its partial rescission of review and liquidation of certain entries that received combination rates, the dumping margin assigned to the sole mandatory respondent, and the dumping margin assigned to the separate rate companies.

DATES: Applicable October 15, 2018.

FOR FURTHER INFORMATION CONTACT: Paul Walker, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0413.

SUPPLEMENTARY INFORMATION:

Background

In the final results of the first administrative review¹ of the antidumping duty order on certain steel nails from China, Commerce calculated a weighted-average dumping margin of 13.90 percent for the sole cooperating mandatory respondent, The Stanley Works (Langfang) Fastening Systems Co., Ltd. (Stanley), and assigned that margin to the 22 companies who had demonstrated their eligibility for a separate rate (The Separate Rate Companies).² Commerce also rescinded the review with respect to certain companies that certified that they made no shipments of subject merchandise during the POR.³ In the amended final results of the first administrative review,⁴ after correcting two ministerial errors, Commerce revised Stanley's dumping margin to 10.63 percent, again assigning that rate to the Separate Rate Companies.

The *Final Results 2008-2009* and *Amended Final Results 2008-2009* were challenged in

¹ See *Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) (*Final Results 2008-2009*), and accompanying Issues & Decision Memorandum (*Final Results IDM*).

² The Separate Rate Companies are: (1) Aironware (Shanghai) Co., Ltd.; (2) Chiieh Yung Metal Ind. Corp.; (3) China Staple Enterprise (Tianjin) Co., Ltd.; (4) Dezhou Hualude Hardware Products Co., Ltd.; (5) Faithful Engineering Products Co., Ltd.; (6) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.; (7) Huanghua Jinhai Hardware Products Co., Ltd.; (8) Huanghua Xionghua Hardware Products Co., Ltd.; (9) Jisco Corporation ("Jisco"); (10) Koram Panagene Co., Ltd. ("Koram Panagene"); (11) Nanjing Yuechang Hardware Co., Ltd.; (12) Qidong Liang Chyuan Metal Industry Co., Ltd.; (13) Qingdao D & L Group Ltd.; (14) Romp (Tianjin) Hardware Co., Ltd.; (15) Shandong Dinglong Import & Export Co., Ltd.; (16) Shanghai Jade Shuttle Hardware Tools Co., Ltd.; (17) Shouguang Meiqing Nail Industry Co., Ltd.; (18) Tianjin Jinchu Metal Products Co., Ltd.; (19) Tianjin Jinghai County Hongli Industry & Business Co., Ltd.; (20) Tianjin Zhonglian Metals Ware Co., Ltd.; (21) Wintime Import & Export Corporation Limited of Zhongshan; and (22) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.

³ See *Final Results 2008-2009*, 76 FR at 16380. The no shipment companies are: (1) Besco Machinery Industry (Zhejiang) Co., Ltd.; (2) Certified Products International Inc.; (3) CYM (Nanjing) Nail Manufacture Co., Ltd.; (4) Dagang Zhitong Metal Products Co., Ltd.; (5) Hebei Super Star Pneumatic Nails Co., Ltd.; (6) Hong Kong Yu Xi Co., Ltd.; (7) Senco-Xingya Metal Products (Taicang) Co., Ltd.; (8) Shanghai Chengkai Hardware Product Co., Ltd.; (9) Shanghai March Import & Export Company Ltd.; (10) Shaoxing Chengye Metal Producing Co., Ltd.; (11) Suzhou Yaotian Metal Products Co., Ltd.; (12) Tianjin Chentai International Trading Co., Ltd.; (13) Tianjin Jurun Metal Products Co., Ltd.; (14) Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.; (15) Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp.; (16) Tianjin Shenyuan Steel Producing Group Co., Ltd.; (17) Wuhu Shijie Hardware Co., Ltd.; and (18) Wuxi Chengye Metal Products Co., Ltd.

⁴ See *Certain Steel Nails from the People's Republic of China: Amended Final Results of the First Antidumping Duty Administrative Review*, 76 FR 23279 (April 26, 2011) (*Amended Final Results 2008-2009*).

two separate cases before the CIT.⁵ After certain claims were dismissed, eight distinct claims remained before the Court. Of those claims, the Court sustained several in two prior rulings;⁶ other claims were subjected to voluntary⁷ or court-ordered⁸ remand redeterminations, before being sustained by the CIT on October 5, 2018.⁹ Between the three total court decisions, and four cumulative remand redeterminations, two claims resulted ultimately in changes to *Final Results 2008-2009* and *Amended Final Results 2008-2009*, as explained below.

The court sustained Commerce on several issues in its two prior rulings. Briefly, those issues pertained to: whether net U.S. prices and normal value were calculated on the same basis; the propriety of using certain data to value electricity; deciding not to apply facts otherwise available, despite missing factors of production; electing not to use intermediate input methodology to calculate normal value; and, limiting to two the number of mandatory respondents.¹⁰ This left two issues unresolved, discussed below.

Treatment of Certain Entries Under Certified Products International Inc.'s Combination Rates

The first issue pertains to the treatment of entries of subject merchandise attributed to Certified Products International Inc. (CPI), a Taiwanese reseller that does not produce steel nails but, rather, purchases them from various unaffiliated producers in China and resells them to customers in the United States. In the first administrative review, CPI claimed that it had no shipments of subject merchandise during the POR; however, Commerce obtained data from U.S. Customs and Border Protection (CBP) that showed entries under 23 producer/exporter combination rates which identified CPI as the exporter. Therefore, Commerce considered

⁵ See *The Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, CIT Case No. 11-102; and *Mid Continent Nail Corp. v. United States*, CIT Case No. 11-119. The cases were partially consolidated into Case No. 11-102 in 2011, then fully consolidated prior to the Court's final ruling on October 5, 2018.

⁶ See *The Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, 964 F.Supp.2d 1311, 1324 (Ct. Int'l Trade 2013) (*Stanley Works I*); and *Mid Continent Nail Corp. v. United States*, 949 F.Supp.2d 1247, 1263-1264 (Ct. Int'l Trade 2013) (*Mid Continent*).

⁷ See *Stanley Works I* at 1317.

⁸ See *Stanley Works I* at 1324; *Mid Continent* at 1279-1280.

⁹ See *The Stanley Works (Langfang) Fastening Systems, Co., Ltd. et al v. United States*, Court No. 11-102, Slip Op. 18-134 (CIT Oct. 5, 2018) (*Stanley Works II*).

¹⁰ See *Stanley Works I* at 1324; *Mid Continent* at 1279-1280.

whether CPI or its unaffiliated Chinese producers were the respondent(s), based on which party had knowledge that the merchandise was destined for the U.S. market. CPI asserted that it had not exported any subject merchandise during the review period and should not, therefore, be considered the exporter of the entries attributed to it. The company indicated, rather, that it had purchased nails for resale from 13 of the 23 unaffiliated producers that had entered subject merchandise into the United States during the POR using CPI's combination rates.

Specifically, CPI acknowledged that it had sourced nails from these 13 companies and stated that these 13 suppliers had knowledge that the sales were ultimately destined for the United States. CPI did not acknowledge having used the remaining 10 combination rates during the review period.

In the *Final Results 2008-2009*, based on the information from CPI and its review of the record evidence, Commerce determined, for the entries under the combination rates associated with the 13 producers that had knowledge that goods sold to CPI were destined for the United States, to instruct CBP to assess antidumping duties at the applicable separate rate for the respective producers.¹¹ For the entries associated with the other 10 combinations that Commerce determined were misattributed to CPI, Commerce indicated that it would instruct CBP to assess antidumping duties at the rate in effect at the time of the entry.¹² Accordingly, Commerce rescinded the review with respect to CPI.¹³ Commerce's determination was challenged in CIT Court No. 11-119.

In *Mid Continent*, the CIT held that Commerce's determination conflicted with the approach taken on the same issue in cases involving market economies, and remanded the issue for further consideration, particularly in light of a subsequent rule change¹⁴ which was finalized

¹¹ See *Final Results IDM* at Comment 9. Pursuant to the *Amended Final Results 2008-2009*, the applicable separate rate was 10.63 percent.

¹² *Id.*

¹³ See *Final Results 2008-2009*, 76 FR at 16380.

¹⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (*NME Reseller Policy Statement*).

after the *Final Results 2008-2009* were issued.¹⁵

In the Mid Continent First Remand Redetermination, Commerce found that the entries attributed to CPI's combination rates should be treated in a manner consistent with the *NME Reseller Policy Statement*. Therefore, Commerce determined to amend its previous rescission of the administrative review with respect to CPI, instead issuing final results of review with respect to CPI. Specifically, with regard to entries associated with the 10 combination rates that CPI did not acknowledge using, Commerce determined it appropriate to instruct CBP to liquidate those entries at the China-wide rate of 118.04 percent, because record evidence demonstrated that none of the companies associated with the 10 combination rates made the relevant export sales. Commerce continued to find the entries associated with the remaining 13 combination rates entitled to liquidation at the applicable separate rate for the respective producers, each of whom had knowledge of sales to the United States. Further, because of an intervening remand redetermination in the separate first administrative review litigation in CIT Court No. 11-102, Commerce determined to apply the revised separate rate of 15.43 percent to such entries.¹⁶

Several months later, before the Court issued a decision, Commerce requested a voluntary remand to address part of its first remand redetermination, which was granted.¹⁷ In the Mid Continent Second Remand Redetermination, Commerce sought to clarify the rate or rates at which entries associated with three of the producers within the grouping of 13 combination rates should be liquidated, because the underlying administrative review had been rescinded for those three producers.¹⁸ Consequently, Commerce found that the entries

¹⁵ See *Mid Continent* at 1287-1288.

¹⁶ See *Final Results of Redetermination Pursuant to Mid Continent Nail Corporation v. United States*, Slip Op. 13-115 (March 5, 2014) (Mid Continent First Remand Redetermination), referring to *Final Results of Redetermination Pursuant to Stanley Works (Langfang) Fastening Systems Co., Ltd. et al v. United States*, Slip Op. 13-118 (March 5, 2014) (Stanley Works First Remand Redetermination).

¹⁷ See *Mid Continent Nail Corporation v. United States*, Court No. 11-119, Order of Sept. 30, 2015.

¹⁸ See *Certain Steel Nails from the People's Republic of China: Notice of Partial Rescission of the First Antidumping Duty Administrative Review*, 75 FR 43149, 43149-43150 (July 23, 2010).

attributed to the three combination rates associated with producers for which the underlying administrative review had been rescinded should be liquidated at the rate in effect at the time of entry, not the separate rate calculated in the review.¹⁹

On October 5, 2018, the CIT sustained Commerce's remand redeterminations pertaining to the treatment of entries under CPI's combination rates. The CIT held that, because there was no further challenge as to which entries would receive the CPI combination rates, the Court would not address the issue further.²⁰ In addition, in response to challenges by certain companies, including CPI, the Court sustained Commerce's remand redetermination to apply the revised separate rate of 15.43 percent to entries under combination rates associated with the 10 producers that had knowledge that goods sold to CPI were destined for the United States, and that remained subject to review.²¹ Thus, in all respects, Commerce's treatment of entries under CPI's combination rates was sustained.

Surrogate Financial Statements

The second issue pertains to Commerce's selection of financial statements for surrogate financial ratios. In the *Final Results 2008-2009*, Commerce selected the financial statements of three companies to use as the source of surrogate financial ratios in the underlying review: Bansidhar Granites Private Limited (Bansidhar), J&K Wire & Steel Industries (J&K), and Nasco Steels Private Ltd. (Nasco). Commerce found that each of these companies produced steel nails, an "identical" product, and declined to use the financial statements from a fourth company, Sundram Fasteners Ltd. (Sundram), finding that Sundram did not manufacture steel nails or comparable merchandise.²² Commerce's determination was challenged in CIT Court No. 11-102.

¹⁹ See *Final Results of Redetermination Pursuant to Mid Continent Nail Corporation v. United States*, Slip Op. 13-115 (Nov. 13, 2015) (Mid Continent Second Remand Redetermination). The names of the three producers, which constitute business proprietary information (BPI), are identified in the BPI version of the remand redetermination.

²⁰ See *Stanley Works II*, Slip Op. 18-134 at 7.

²¹ *Id.* at 16-18.

²² See *Final Results 2008-2009* and IDM at Comment 2.

During litigation, Commerce published the final results of the second administrative review of steel nails from China.²³ In the *Second Review Final Results*, Commerce stated that it had refined its practice with respect to the determination of whether a company is a producer of “identical” or “comparable” merchandise within the context of calculating surrogate values for manufacturing overhead, general expenses and profit.²⁴ Given the modified practice, Commerce sought a voluntary remand in the first administrative review litigation, to reconsider its determination concerning the selection of financial statements. The Court granted Commerce’s request.²⁵

In the *Stanley Works First Remand Redetermination*, Commerce continued to find it appropriate to use the financial statements of Bansidhar and Nasco, two of the three companies selected in the *Final Results 2008-2009*, to calculate the surrogate financial ratios. Commerce found, however, that it was no longer appropriate to use the financial statements of the third initially-selected company, J&K, and instead found it appropriate to use the financial statements of another company, Sundram, that had been rejected previously. In particular, Commerce found Sundram to be a producer of comparable merchandise but excluded J&K as a producer of non-comparable merchandise. Commerce also found that the financial statements of all four companies showed no receipt of countervailable subsidies, that the differences in the companies’ scale of production did not render the data unreasonable, that the consumption of steel wire rod – the main input in the production of nails – was not determinative of whether a company is a producer of comparable merchandise, and that Sundram’s financial statements were not aberrational. Based on this redetermination, Commerce recalculated the surrogate financial ratios and the margin for Stanley, and the Separate Rate Companies, was revised to

²³ See *Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) (*Second Review Final Results*), and accompanying Issues & Decision Memorandum (*Second Review IDM*).

²⁴ See *Second Review IDM* at Comment 2.

²⁵ See *Stanley Works I*, 964 F. Supp. 2d at 1342.

15.43 percent.²⁶

Several months later, before the Court issued a decision, Commerce requested a voluntary remand to address part of its first remand redetermination, which was granted.²⁷ In the Stanley Works Second Remand Redetermination, Commerce corrected its error in using Nasco's overhead ratio calculated in the *Final Results 2008-2009*, rather than that used in the *Amended Final Results 2008-2009*. Commerce relied on this ratio in a comparison with Sundram's overhead ratio to demonstrate why Sundram's financial statements are not aberrational. Commerce found that there were no "extraordinary" items within Sundram's financial statements, and that inherent variations in overhead ratios derived from a limited number of available financial statements cannot provide a basis for finding one company's ratio aberrational.²⁸ Stanley raised numerous arguments related to Commerce's remand redeterminations.

On October 5, 2018, the CIT sustained Commerce's remand redeterminations pertaining to the selection of financial statements for surrogate financial ratios. First, the Court affirmed Commerce's determination that Commerce did not have a reason to believe or suspect that Sundram may have received countervailable subsidies based on the record information.²⁹ Second, the Court upheld Commerce's revised methodology for determining that J&K was not a suitable surrogate financial company because its activities related primarily to the production and sale of non-comparable merchandise, while finding that Sundram produced comparable merchandise.³⁰ Third, the Court held that Commerce's finding that Sundram's overhead ratios were not aberrational or distortive is supported by substantial evidence, and could be included

²⁶ See Final Results of Redetermination Pursuant to Stanley Works (Langfang) Fastening Systems Co., Ltd. et al v. United States, Slip Op. 13-118 (March 5, 2014) (Stanley Works First Remand Redetermination).

²⁷ See *Stanley Works (Langfang) Fastening Systems Co., Ltd. et al v. United States*, Court No. 11-102, Order of Feb. 18, 2015.

²⁸ See Final Results of Redetermination Pursuant to Stanley Works (Langfang) Fastening Systems Co., Ltd. et al v. United States, Slip Op. 13-118 (April 16, 2015) (Stanley Works Second Remand Redetermination).

²⁹ See *Stanley Works II*, Slip Op. 18-134 at 9-13.

³⁰ *Id.* at 13-14.

in the averaging of financial data for surrogate value purposes.³¹ Accordingly, the Court affirmed applying the revised margin, 15.43 percent, to Stanley and the Separate Rate Companies.³²

Timken Notice

In its decision in *Timken*,³³ as clarified by *Diamond Sawblades*,³⁴ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 5, 2018, final judgment sustaining issues related to the treatment of the entries associated with CPI’s combinations rates, and sustaining application of the revised margin calculated for Stanley and the Separate Rate Companies, constitutes a final decision of that court that is not in harmony with the *Final Results 2008-2009* and *Amended Final Results 2008-2009*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

Second Amended Final Results 2008-2009

Because there is now a final court decision, Commerce is amending the *Final Results 2008-2009* and *Amended Final Results 2008-2009* with respect to the rate assigned to Stanley and the 22 Separate Rate Companies listed below. Accordingly, the revised weighted-average dumping margins for these companies are as follows:

Exporter	Weighted-Average Dumping Margin (percent)
The Stanley Works (Langfang) Fastening Systems Co., Ltd	15.43

³¹ *Id.* at 14-15.

³² *Id.* at 8 and 18.

³³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

³⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Aironware (Shanghai) Co., Ltd	15.43
Chiieh Yung Metal Ind. Corp	15.43
China Staple Enterprise (Tianjin) Co., Ltd	15.43
Dezhou Hualude Hardware Products Co., Ltd	15.43
Faithful Engineering Products Co., Ltd	15.43
Hengshui Mingyao Hardware & Mesh Products Co., Ltd	15.43
Huanghua Jinhai Hardware Products Co., Ltd	15.43
Huanghua Xionghua Hardware Products 10.63 Co., Ltd	15.43
Jisco Corporation	15.43
Koram Panagene Co., Ltd	15.43
Nanjing Yuechang Hardware Co., Ltd	15.43
Qidong Liang Chyuan Metal Industry Co., Ltd	15.43
Qingdao D & L Group Ltd	15.43
Romp (Tianjin) Hardware Co., Ltd	15.43
Shandong Dinglong Import & Export Co., Ltd	15.43
Shanghai Jade Shuttle Hardware Tools Co., Ltd	15.43
Shouguang Meiqing Nail Industry Co., Ltd	15.43
Tianjin Jinchu Metal Products Co., Ltd	15.43
Tianjin Jinghai County Hongli Industry & Business Co., Ltd	15.43
Tianjin Zhonglian Metals Ware Co., Ltd	15.43
Wintime Import & Export Corporation Limited of Zhongshan	15.43
Zhejiang Gem-Chun Hardware Accessory Co., Ltd	15.43

Commerce is also amending the *Amended Final Results 2008-2009* with respect to CPI. In particular, Commerce is amending its previous rescission of the administrative review and is no longer rescinding the review with respect to CPI but, instead, is issuing final results of review with respect to CPI. Moreover, Commerce intends to issue instructions to CBP to liquidate entries entered under CPI's 23 combination rates as follows. For the 10 combination rates that CPI does not acknowledge using, Commerce intends to instruct CBP to liquidate entries under those 10 combination rates at the China-wide rate of 118.04 percent because the record evidence demonstrates that none of the companies associated with these 10 combination rates made the relevant export sale. For the 10 combination rates that CPI does acknowledge using and for which each producer had knowledge the merchandise was destined for the United States, Commerce intends to instruct CBP to liquidate entries under those 10 combination rates at the separate rate of 15.43 percent, determined for each respective producer during the administrative review. For the remaining three combination rates, Commerce intends to

instruct CBP to liquidate such entries at the rate in effect at the time of entry, because the three producers at issue were not included in the final results of the administrative review.

In the event that the CIT's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct CBP to assess antidumping duties in accordance with the above.

Cash Deposit Requirements

The cash deposit rates for Stanley and the 22 Separate Rate Companies have changed as a result of subsequent administrative reviews. Therefore, this amended final results does not change the later-established cash deposit rates for these companies.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 3, 2018

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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